

AMENDED IN SENATE APRIL 20, 2015
AMENDED IN SENATE MARCH 26, 2015
AMENDED IN SENATE MARCH 12, 2015

SENATE BILL

No. 122

Introduced by Senators Jackson and Hill

January 15, 2015

An act to amend Sections 21082.1, 21091, 21159.9, and 21167.6 of, and to add Section 21167.6.2 to, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 122, as amended, Jackson. California Environmental Quality Act: record of proceedings.

(1) The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA establishes a procedure for the preparation and certification of the record of proceedings upon the filing of an action or proceeding challenging a lead agency's action on the grounds of noncompliance with CEQA.

This bill would require the lead agency, at the request of a project applicant and consent of the lead agency, to prepare a record of proceedings concurrently with the preparation of a negative declaration, mitigated negative declaration, EIR, or other environmental document for projects.

(2) CEQA requires the lead agency to submit to the State Clearinghouse a sufficient number of copies of specified environmental documents prepared pursuant to CEQA for review and comment by state agencies in certain circumstances and a copy of those documents in electronic form, as prescribed. CEQA requires the Office of Planning and Research to implement, utilizing existing resources, a public assistance program to, among other things, establish and maintain a database to assist in the preparation of environmental documents, ~~and~~ *establish and maintain* a central repository for the collection, storage, retrieval, and dissemination of certain notices provided to the office, and provide to the California State Library copies of documents submitted in electronic format to the office pursuant to CEQA.

This bill would require a lead agency to submit to the State Clearinghouse *those* environmental documents ~~in the form either a hard-copy or electronic form as prescribed by the office~~. The bill would instead require the office to establish and maintain a database for the collection, storage, retrieval, and dissemination of environmental documents and notices prepared pursuant to CEQA and to make the database available online to the public. The bill would eliminate the requirement to provide copies of documents to the California State Library. The bill would require the office to submit to the Legislature a report, by July 1, 2016, describing the implementation of this requirement and a status report, by July 1, 2018.

~~(3) This bill would state the intent of the Legislature to enact legislation establishing a public review period for a final environmental impact report, and relating to the record of proceedings for a project for which an environmental impact report is prepared pursuant to CEQA.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21082.1 of the Public Resources Code
2 is amended to read:

1 21082.1. (a) A draft environmental impact report,
2 environmental impact report, negative declaration, or mitigated
3 negative declaration prepared pursuant to the requirements of this
4 division shall be prepared directly by, or under contract to, a public
5 agency.

6 (b) This section does not prohibit, and shall not be construed as
7 prohibiting, a person from submitting information or other
8 comments to the public agency responsible for preparing an
9 environmental impact report, draft environmental impact report,
10 negative declaration, or mitigated negative declaration. The
11 information or other comments may be submitted in any format,
12 shall be considered by the public agency, and may be included, in
13 whole or in part, in any report or declaration.

14 (c) The lead agency shall do all of the following:

15 (1) Independently review and analyze any report or declaration
16 required by this division.

17 (2) Circulate draft documents that reflect its independent
18 judgment.

19 (3) As part of the adoption of a negative declaration or a
20 mitigated negative declaration, or certification of an environmental
21 impact report, find that the report or declaration reflects the
22 independent judgment of the lead agency.

23 (4) Submit a sufficient number of copies, ~~in the form~~ *either a*
24 *hard-copy or electronic form* as required by the Office of Planning
25 and Research, of the draft environmental impact report, proposed
26 negative declaration, or proposed mitigated negative declaration
27 to the State Clearinghouse for review and comment by state
28 agencies, if any of the following apply:

29 (A) A state agency is any of the following:

- 30 (i) The lead agency.
31 (ii) A responsible agency.
32 (iii) A trustee agency.

33 (B) A state agency otherwise has jurisdiction by law with respect
34 to the project.

35 (C) The proposed project is of sufficient statewide, regional, or
36 areawide environmental significance as determined pursuant to
37 the guidelines certified and adopted pursuant to Section 21083.

38 SEC. 2. Section 21091 of the Public Resources Code is
39 amended to read:

1 21091. (a) The public review period for a draft environmental
2 impact report ~~may~~ *shall* not be less than 30 days. If the draft
3 environmental impact report is submitted to the State Clearinghouse
4 for review, the review period shall be at least 45 days, and the lead
5 agency shall provide a sufficient number of copies of the document,
6 ~~in the form~~ *either a hard-copy or electronic form as* required by
7 the Office of Planning and Research, to the State Clearinghouse
8 for review and comment by state agencies.

9 (b) The public review period for a proposed negative declaration
10 or proposed mitigated negative declaration ~~may~~ *shall* not be less
11 than 20 days. If the proposed negative declaration or proposed
12 mitigated negative declaration is submitted to the State
13 Clearinghouse for review, the review period shall be at least 30
14 days, and the lead agency shall provide a sufficient number of
15 copies of the document, ~~in the form~~ *either a hard-copy or*
16 *electronic form as* required by the Office of Planning and Research,
17 to the State Clearinghouse for review and comment by state
18 agencies.

19 (c) (1) Notwithstanding subdivisions (a) and (b), if a draft
20 environmental impact report, proposed negative declaration, or
21 proposed mitigated negative declaration is submitted to the State
22 Clearinghouse for review and the period of review by the State
23 Clearinghouse is longer than the public review period established
24 pursuant to subdivision (a) or (b), whichever is applicable, the
25 public review period shall be at least as long as the period of review
26 and comment by state agencies as established by the State
27 Clearinghouse.

28 (2) The public review period and the state agency review period
29 may, but are not required to, begin and end at the same time. Day
30 one of the state agency review period shall be the date that the
31 State Clearinghouse distributes the CEQA document to state
32 agencies.

33 (3) If the submittal of a CEQA document is determined by the
34 State Clearinghouse to be complete, the State Clearinghouse shall
35 distribute the document within three working days from the date
36 of receipt. The State Clearinghouse shall specify the information
37 that will be required in order to determine the completeness of the
38 submittal of a CEQA document.

39 (d) (1) The lead agency shall consider comments it receives on
40 a draft environmental impact report, proposed negative declaration,

1 or proposed mitigated negative declaration if those comments are
2 received within the public review period.

3 (2) (A) With respect to the consideration of comments received
4 on a draft environmental impact report, the lead agency shall
5 evaluate comments on environmental issues that are received from
6 persons who have reviewed the draft and shall prepare a written
7 response pursuant to subparagraph (B). The lead agency may also
8 respond to comments that are received after the close of the public
9 review period.

10 (B) The written response shall describe the disposition of each
11 significant environmental issue that is raised by commenters. The
12 responses shall be prepared consistent with Section 15088 of Title
13 14 of the California Code of Regulations.

14 (3) (A) With respect to the consideration of comments received
15 on a draft environmental impact report, proposed negative
16 declaration, proposed mitigated negative declaration, or notice
17 pursuant to Section 21080.4, the lead agency shall accept comments
18 via ~~email~~ *electronic mail* and shall treat ~~email~~ *electronic-mail*
19 comments as equivalent to written comments.

20 (B) Any law or regulation relating to written comments received
21 on a draft environmental impact report, proposed negative
22 declaration, proposed mitigated negative declaration, or notice
23 received pursuant to Section ~~21080.4~~, *21080.4* shall also apply to
24 ~~email~~ *electronic-mail* comments received for those reasons.

25 (e) (1) Criteria for shorter review periods by the State
26 Clearinghouse for documents that must be submitted to the State
27 Clearinghouse shall be set forth in the written guidelines issued
28 by the Office of Planning and Research and made available to the
29 public.

30 (2) Those shortened review periods may not be less than 30
31 days for a draft environmental impact report and 20 days for a
32 negative declaration.

33 (3) A request for a shortened review period shall only be made
34 in writing by the decisionmaking body of the lead agency to the
35 Office of Planning and Research. The decisionmaking body may
36 designate by resolution or ordinance a person authorized to request
37 a shortened review period. A designated person shall notify the
38 decisionmaking body of this request.

1 (4) A request approved by the State Clearinghouse shall be
2 consistent with the criteria set forth in the written guidelines of
3 the Office of Planning and Research.

4 (5) A shortened review period may not be approved by the
5 Office of Planning and Research for a proposed project of
6 statewide, regional, or areawide environmental significance as
7 determined pursuant to Section 21083.

8 (6) An approval of a shortened review period shall be given
9 prior to, and reflected in, the public notice required pursuant to
10 Section 21092.

11 (f) Prior to carrying out or approving a project for which a
12 negative declaration has been adopted, the lead agency shall
13 consider the negative declaration together with comments that
14 were received and considered pursuant to paragraph (1) of
15 subdivision (d).

16 SEC. 3. Section 21159.9 of the Public Resources Code is
17 amended to read:

18 21159.9. The Office of Planning and Research shall implement
19 a public assistance and information-~~program~~, *program* to ensure
20 efficient and effective implementation of this-~~division~~, *division*
21 *and* to do both of the following:

22 (a) Establish a public education and training program for
23 planners, developers, and other interested parties to assist them in
24 implementing this division.

25 (b) (1) Establish and maintain a database for the collection,
26 storage, retrieval, and dissemination of environmental documents,
27 notices of exemption, notices of preparation, notices of
28 determination, and notices of completion provided to the-~~office~~.
29 *Office of Planning and Research*. The database shall be available
30 online to the public through the Internet. The-~~office~~ *Office of*
31 *Planning and Research* may coordinate with another state agency
32 to host and maintain the online database.

33 (2) The-~~office~~ *Office of Planning and Research* may phase in
34 the submission of electronic documents and use of the database
35 by state and local public agencies.

36 (3) The-~~office~~ *Office of Planning and Research* shall develop
37 a budget for the development, hosting, and maintenance of the
38 database and shall submit the budget to the Department of Finance
39 for consideration and approval.

1 (4) (A) Pursuant to Section 9795 of the Government Code, the
2 ~~office~~ *Office of Planning and Research* shall, no later than July 1,
3 2016, submit to the Legislature a report describing how it plans to
4 implement this subdivision, and shall provide an additional report
5 to the Legislature no later than July-2018 *1, 2018*, describing the
6 status of the implementation of this subdivision.

7 (B) Pursuant to Section 10231.5 of the Government Code, this
8 paragraph is inoperative on July 1, 2022.

9 SEC. 4. Section 21167.6 of the Public Resources Code is
10 amended to read:

11 21167.6. Notwithstanding any other law, in all actions or
12 proceedings brought pursuant to Section 21167, except as provided
13 in Section 21167.6.2 or those involving the Public Utilities
14 Commission, all of the following shall apply:

15 (a) At the time that the action or proceeding is filed, the plaintiff
16 or petitioner shall file a request that the respondent public agency
17 prepare the record of proceedings relating to the subject of the
18 action or proceeding. The request, together with the complaint or
19 petition, shall be served personally upon the public agency not
20 later than 10 business days from the date that the action or
21 proceeding was filed.

22 (b) (1) The public agency shall prepare and certify the record
23 of proceedings not later than 60 days from the date that the request
24 specified in subdivision (a) was served upon the public agency.
25 Upon certification, the public agency shall lodge a copy of the
26 record of proceedings with the court and shall serve on the parties
27 notice that the record of proceedings has been certified and lodged
28 with the court. The parties shall pay any reasonable costs or fees
29 imposed for the preparation of the record of proceedings in
30 conformance with any law or rule of court.

31 (2) The plaintiff or petitioner may elect to prepare the record
32 of proceedings or the parties may agree to an alternative method
33 of preparation of the record of proceedings, subject to certification
34 of its accuracy by the public agency, within the time limit specified
35 in this subdivision.

36 (c) The time limit established by subdivision (b) may be
37 extended only upon the stipulation of all parties who have been
38 properly served in the action or proceeding or upon order of the
39 court. Extensions shall be liberally granted by the court when the
40 size of the record of proceedings renders infeasible compliance

1 with that time limit. There is no limit on the number of extensions
2 that may be granted by the court, but no single extension shall
3 exceed 60 days unless the court determines that a longer extension
4 is in the public interest.

5 (d) If the public agency fails to prepare and certify the record
6 within the time limit established in paragraph (1) of subdivision
7 (b), or any continuances of that time limit, the plaintiff or petitioner
8 may move for sanctions, and the court may, upon that motion,
9 grant appropriate sanctions.

10 (e) The record of proceedings shall include, but is not limited
11 to, all of the following items:

12 (1) All project application materials.

13 (2) All staff reports and related documents prepared by the
14 respondent public agency with respect to its compliance with the
15 substantive and procedural requirements of this division and with
16 respect to the action on the project.

17 (3) All staff reports and related documents prepared by the
18 respondent public agency and written testimony or documents
19 submitted by any person relevant to any findings or statement of
20 overriding considerations adopted by the respondent agency
21 pursuant to this division.

22 (4) Any transcript or minutes of the proceedings at which the
23 decisionmaking body of the respondent public agency heard
24 testimony on, or considered any environmental document on, the
25 project, and any transcript or minutes of proceedings before any
26 advisory body to the respondent public agency that were presented
27 to the decisionmaking body prior to action on the environmental
28 documents or on the project.

29 (5) All notices issued by the respondent public agency to comply
30 with this division or with any other law governing the processing
31 and approval of the project.

32 (6) All written comments received in response to, or in
33 connection with, environmental documents prepared for the project,
34 including responses to the notice of preparation.

35 (7) All written evidence or correspondence submitted to, or
36 transferred from, the respondent public agency with respect to
37 compliance with this division or with respect to the project.

38 (8) Any proposed decisions or findings submitted to the
39 decisionmaking body of the respondent public agency by its staff,
40 or the project proponent, project opponents, or other persons.

1 (9) The documentation of the final public agency decision,
2 including the final environmental impact report, mitigated negative
3 declaration, or negative declaration, and all documents, in addition
4 to those referenced in paragraph (3), cited or relied on in the
5 findings or in a statement of overriding considerations adopted
6 pursuant to this division.

7 (10) Any other written materials relevant to the respondent
8 public agency's compliance with this division or to its decision on
9 the merits of the project, including the initial study, any drafts of
10 any environmental document, or portions thereof, that have been
11 released for public review, and copies of studies or other documents
12 relied upon in any environmental document prepared for the project
13 and either made available to the public during the public review
14 period or included in the respondent public agency's files on the
15 project, and all internal agency communications, including staff
16 notes and memoranda related to the project or to compliance with
17 this division.

18 (11) The full written record before any inferior administrative
19 decisionmaking body whose decision was appealed to a superior
20 administrative decisionmaking body prior to the filing of litigation.

21 (f) In preparing the record of proceedings, the party preparing
22 the record shall strive to do so at reasonable cost in light of the
23 scope of the record.

24 (g) The clerk of the superior court shall prepare and certify the
25 clerk's transcript on appeal not later than 60 days from the date
26 that the notice designating the papers or records to be included in
27 the clerk's transcript was filed with the superior court, if the party
28 or parties pay any costs or fees for the preparation of the clerk's
29 transcript imposed in conformance with any law or rules of court.
30 Nothing in this subdivision precludes an election to proceed by
31 appendix, as provided in Rule 8.124 of the California Rules of
32 Court.

33 (h) Extensions of the period for the filing of any brief on appeal
34 may be allowed only by stipulation of the parties or by order of
35 the court for good cause shown. Extensions for the filing of a brief
36 on appeal shall be limited to one 30-day extension for the
37 preparation of an opening ~~brief~~, *brief* and one 30-day extension
38 for the preparation of a responding brief, except that the court may
39 grant a longer extension or additional extensions if it determines

1 that there is a substantial likelihood of settlement that would avoid
2 the necessity of completing the appeal.

3 (i) At the completion of the filing of briefs on appeal, the
4 appellant shall notify the court of the completion of the filing of
5 briefs, whereupon the clerk of the reviewing court shall set the
6 appeal for hearing on the first available calendar date.

7 SEC. 5. Section 21167.6.2 is added to the Public Resources
8 Code, to read:

9 21167.6.2. (a) (1) Notwithstanding Section 21167.6, upon
10 the written request of a project applicant received no later than 30
11 days after the date that the lead agency makes a determination
12 pursuant to subdivision (a) of Section 21080.1, Section 21094.5,
13 or Chapter 4.2 (commencing with Section 21155) and with the
14 consent of the lead agency as provided in subdivision (e), the lead
15 agency shall prepare and certify the record of proceedings in the
16 following manner:

17 (A) The lead agency for the project shall prepare the record of
18 proceedings pursuant to this division concurrently with the
19 administrative process.

20 (B) All documents and other materials placed in the record of
21 proceedings shall be posted on, and be downloadable from, an
22 Internet Web site maintained by the lead agency commencing with
23 the date of the release of the draft environmental document for the
24 project. If the lead agency cannot maintain an Internet Web site
25 with the information required pursuant to this section, the lead
26 agency shall provide a link on the agency's Internet Web site to
27 that information.

28 (C) The lead agency shall make available to the public in a
29 readily accessible electronic format the draft environmental
30 document for the project, and all other documents submitted to,
31 cited by, or relied on by the lead agency, in the preparation of the
32 draft environmental document for the project.

33 (D) A document prepared by the lead agency or submitted by
34 the applicant after the date of the release of the draft environmental
35 document for the project that is a part of the record of the
36 proceedings shall be made available to the public in a readily
37 accessible electronic format within 5 business days after the
38 document is released or received by the lead agency.

39 (E) The lead agency shall encourage written comments on the
40 project to be submitted in a readily accessible electronic format,

1 and shall make any comment available to the public in a readily
2 accessible electronic format within 5 business days of its receipt.

3 (F) Within 7 business days after the receipt of any comment
4 that is not in an electronic format, the lead agency shall convert
5 that comment into a readily accessible electronic format and make
6 it available to the public in that format.

7 (G) The lead agency shall certify the record of proceedings
8 within 30 days after the filing of the notice required pursuant to
9 Section 21108 or 21152.

10 (2) This subdivision does not require the disclosure or posting
11 of any trade secret as defined in Section 6254.7 of the Government
12 Code, information about the location of archaeological sites or
13 sacred lands, or any other information that is subject to the
14 disclosure restrictions of Section 6254 of the Government Code.

15 (b) Any dispute regarding the record of proceedings prepared
16 pursuant to this section shall be resolved by the court in an action
17 or proceeding brought pursuant to subdivision (b) or (c) of Section
18 21167.

19 (c) The content of the record of proceedings shall be as specified
20 in subdivision (e) of Section 21167.6.

21 (d) The negative declaration, mitigated negative declaration,
22 draft and final environmental impact report, or other environmental
23 document shall include a notice in no less than 12-point type stating
24 the following:

25
26 “THIS DOCUMENT IS SUBJECT TO SECTION 21167.6.2
27 OF THE PUBLIC RESOURCES CODE, WHICH REQUIRES
28 THE RECORD OF PROCEEDINGS FOR THIS PROJECT TO
29 BE PREPARED CONCURRENTLY WITH THE
30 ADMINISTRATIVE—~~PROCESS~~, *PROCESS*; DOCUMENTS
31 PREPARED BY, OR SUBMITTED TO, THE LEAD AGENCY
32 TO BE POSTED ON THE LEAD AGENCY’S INTERNET WEB
33 ~~SITE~~, *SITE*; AND THE LEAD AGENCY TO ENCOURAGE
34 WRITTEN COMMENTS ON THE PROJECT TO BE
35 SUBMITTED TO THE LEAD AGENCY IN A READILY
36 ACCESSIBLE ELECTRONIC FORMAT.”

37
38 (e) (1) The lead agency shall respond to a request by the project
39 applicant within 10 business days from the date that the request
40 pursuant to subdivision (a) is received by the lead agency.

(2) A project applicant and the lead agency may mutually agree, in writing, to extend the time period for the lead agency to respond pursuant to paragraph (1), but they shall not extend that period beyond the commencement of the public review period for the proposed negative declaration, mitigated negative declaration, draft environmental impact report, or other environmental document.

(3) The request to prepare a record of proceedings pursuant to this section shall be deemed denied if the lead agency fails to respond within 10 business days of receiving the request or within the time period agreed upon pursuant to paragraph (2), whichever ends later.

(f) The written request of the applicant submitted pursuant to subdivision (a) shall include an agreement to pay all of the lead agency's costs of preparing and certifying the record of proceedings pursuant to this section and complying with the requirements of this section, in a manner specified by the lead agency.

(g) The costs of preparing the record of proceedings pursuant to this section and complying with the requirements of this section are not recoverable costs pursuant to Section 1032 of the Code of Civil Procedure.

(h) Pursuant to subdivision (f) and Section 21089, the lead agency may charge and collect a reasonable fee from the person making the request pursuant to subdivision (a) to recover the costs incurred by the lead agency in preparing the record of proceedings pursuant to this section.

~~SEC. 6. It is the intent of the Legislature to enact legislation establishing a public review period for a final environmental impact report prepared pursuant to, and relating to the record of proceedings for a project for which an environmental impact report is prepared pursuant to, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).~~